

REMARKS

This amendment is filed in response to the Office Action dated September 28, 2005. In view of this amendment, this application should be allowed and the case passed to issue.

No new matter is introduced by this amendment. The amendments to claims 1, 7, and 12, and new claims 16-23 are fully supported by the specification, including the written description on pages 5-7 and the accompanying Figures. The amendments to claims 1, 7, and 12 merely clarify the claims and do not narrow the scope of the claims.

Claims 1-23 are pending in this application. Claims 1-15 are rejected. Claims 1, 7, and 12 have been amended in this response. New claims 16-23 have been added.

Interview Summary

Applicant gratefully acknowledges the Examiner's courtesy of granting a telephone interview with the undersigned on October 27, 2005. Examiner Graybill's explanation of the rejections under 35 U.S.C. § 112 is greatly appreciated. The undersigned inquired about the 35 U.S.C. § 112 rejections, and explained forming additional insulating films by repeating the forming steps of the first and second insulating films, as disclosed on pages 5-7 of the specification and Figures 3 and 4. The Examiner indicated that he understood what it was that the inventors intended to claim, but the claim language was not clear enough. The Examiner indicated that reciting the formation of the insulating films in the form of an algebraic statement, wherein the odd layers are one composition and the even layers are a different composition, may be acceptable. Though the undersigned requested examples of acceptable claim wording and algebraic statements, the Examiner did not provide any examples.

Restriction

The Examiner asserted that the election of species filed July 15, 2005 was not fully responsive. Therefore, the Examiner included claim 10 in the species of claims 1-8 and 12-15.

The Examiner's reconsideration of the election of species is greatly appreciated by Applicant.

Applicant respectfully requests the examination and allowance of claims 9 and 11 upon the allowance of claim 1.

Claim Rejections Under 35 U.S.C. § 112

Claims 1-8, 10, and 12-15 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. The Examiner averred that the specification does not describe that the steps of forming the first insulating film and forming the second insulating film are alternately repeated. The Examiner further asserted that one of skill in the art would not be able to form more than one said first and second insulating film.

Claims 1-8, 10, and 12-15 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite because the steps of forming said first insulating film and forming said second insulating are alternately repeated are allegedly incomprehensible. The Examiner explained that the step of forming the first and second insulating films in claims 1, 7, and 12 cannot be repeated because the first and second insulating layers are already formed. In addition, the Examiner averred that the “a third insulating film formed later out of said first insulating film and said second insulating film” in claim 12 is incomprehensible because the time to which the film is formed subsequently is not given or otherwise ascertainable.

These rejections are traversed, and reconsideration and withdrawal thereof respectfully requested. The claims are fully enabled and definite when interpreted in light of the

specification, including the disclosure on pages 6 and 7 of the specification and the accompanying Figures. One of ordinary skill in this art would recognize that the claims are enabled and definite, as demonstrated by the Examiner's indication during the telephone interview of October 27, 2005, that he understood what Applicant intended to claim.

35 U.S.C. 112, requires that the claims particularly point out and distinctly define the metes and bounds of the subject matter that will be protected by the patent grant (MPEP § 2171).

Some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire. Examiners are encouraged to suggest claim language to applicants to improve the clarity or precision of the language used, but should not reject claims or insist on their own preferences if other modes of expression selected by applicants satisfy the statutory requirement.

The essential inquiry pertaining to this requirement is whether the claims set out and circumscribe a particular subject matter with a **reasonable** degree of clarity and particularity.

Definiteness of claim language must be analyzed, not in a vacuum, but in light of:

(A) The content of the particular application disclosure;

(B) The teachings of the prior art; and

(C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made. (MPEP 2173.02) (emphasis added).

Applicant traverses the Examiner's attempt to hold Applicant to higher standard than that permitted by the statute. Applicant submits that the claims, as originally presented, meet the requirements of 35 U.S.C. § 112.

However, in order to advance the prosecution of this application, Applicant has amended claims 1 and 7 to further clarify that the steps of forming the first and second insulating films are repeated to form additional first and second insulating films, not that the same first and second insulating films are repeatedly formed. Claim 12, has been amended to further clarify the formation of the third insulating film.

New claims 16-23 are introduced to further address the rejections under 35 U.S.C. § 112. In accordance with the Examiner's recommendations made during the October 27, 2005 telephone interview, new claims 16, 17, 20, and 21 incorporate algebraic statements into the claims. New claims 22 and 23 distinguish between odd-numbered and even-numbered films. New claims 18 and 19 distinguish between the first and second insulating films and additional films comprising the composition of either the first or second insulating films.

Applicant submits that all the claims fully comport with the requirements of 35 U.S.C. § 112.

In view of the above amendments and remarks, Applicant submits that this case should be allowed and passed to issue. If there are any questions regarding this Amendment or the application in general, a telephone call to the undersigned would be appreciated to expedite the prosecution of the application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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